



State of Wisconsin • DEPARTMENT OF REVENUE

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REAL ESTATE TRANSFER NEWS (RETN) FEBRUARY 2001

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

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P.O. Box 8933
Madison, WI 53708-8933

This newsletter may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

1Q. Is the Department of Revenue going to print new INSTRUCTIONS FOR THE WISCONSIN REAL ESTATE TRANSFER RETURN (PE-500) regarding the new and changed exemptions from transfer fee under s. 77.25, Stats.?

- A.** The Department has decided not to print revised instructions until the current supply is depleted. At the present time, this RETN and the our web site will be the source of the new and revised exemptions. They can also be found on the web at: <http://www.legis.state.wi.us/rsb/stats.html>

The new exemption under s. 77.25, Stats. is as follows:

(21) Of transmission facilities or land rights to the transmission company, as defined in s. 196.485 (1) (ge), under s. 196.485 (5) (b) or (c) or (6) (a) 1. in exchange for securities, as defined in s. 196.485 (1) (fe). (1999 Act 9, Effective Oct. 29, 1999)

The following exemptions are revised with **new language**: (1999 Act 162, Effective May 27, 2000)

(15) Between a corporation and its shareholders if all of the stock is owned by persons who are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, **whether by blood or by adoption**, or as spouses of siblings, if the transfer is for no consideration except the assumption of debt or stock of the corporation and if the corporation owned the property for at least 3 years.

(15m) Between a partnership and one or more of its partners if all of the partners are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, **whether by blood or by adoption**, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the partnership.

(15s) Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, **whether by blood or by adoption**, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company.

Please also note the **new language** in the definition of a conveyance under s. 77.21, Stats.:

- (1) "Conveyance" includes deeds and other instruments for the passage of ownership interests in real estate, including contracts and assignments of a vendee's interest therein, **including instruments that are evidence of a sale of time-share property, as defined in s. 707.02 (32)**, and including leases for at least 99 years but excluding leases for less than 99 years, easements and wills. (1999 Act 9, Effective Oct. 29, 1999)

2Q. Can "Farmland Use Value" be used for Total value of REAL ESTATE on Line 18 when agricultural property is being conveyed?

- A.** Use value assessment is a method of assessing agricultural land for Chapter 70, Stats. and is not used for value on the transfer return per definitions under s. 77.21, Stats. Value is defined per s. 77.21(3)(a), Stats. "in the case of any conveyance not a gift, the amount of the full actual consideration paid therefor or to be paid, including the amount of any lien or liens thereon; and (b) in the case of a gift, or any deed of nominal consideration or any exchange of properties, the estimated price the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and at prevailing general price levels." In other words, if a sale, then the full sales price including any liens and if a gift or nominal consideration you must use the fair market value.

3Q. Are all sales to a governmental agency exempt from fee under s. 77.25(12), Stats. pursuant to or in lieu of condemnation?

- A.** Not all sales to a governmental agency are exempt from fee. The conveyance is exempt per 12 as "pursuant to or in lieu of condemnation" if the sale meets the criteria under s. 32.05, Stats. or s. 32.06 Stats. A couple of examples of when the exemption does not apply are:
1. If the property purchased has been on the open market for sale.
 2. If the property was the final selection of many parcels for a project that could have been placed anywhere. Example of such a project would be a maintenance garage as compared to a extension of a airport runway.

4Q. I am filing a quit claim deed from a surviving spouse disclaiming joint tenancy in the estate's real estate under s. 854.13(2)(b), Stats. The effect is as though the surviving joint tenant had predeceased the decedent. Is a transfer return required? Also, would a return be required when the children of the decedent disclaimed any interest in the estate and they had no prior interest or title in the real estate?

- A.** The spousal deed would be exempt from return and fee per s. 77.25(11), Stats. "By will, descent or survivorship." It is assumed that spouses may also have an interest in the property under marital property law. For the children, since they had no prior interest or title in the property, this would be exempt from return and fee pursuant to s. 77.21(1), Stats. You should state on the document something to the effect "this is a disclaimer only and not a conveyance per s. 77.21(1), Stats." If they had an interest in the property, then the use of the exemption per s. 77.25(11), Stats. would apply. To exempt these from a return, you must place the exemption s. 77.25(11), Stats. or s. 77.21(1), Stats. on the document. We have instructed the Register of Deeds that they should not accept exempt recordings verbally and the person recording the document should place the exemption on the document when no return is furnished.

5Q. I am recently divorced and now want to have my prior name shown on the deed. Do I need a return for a name change?

No. To show a name change is not a conveyance under s. 77.21(1), Stats. and no return is needed. Exempt the document by stating "this is a name change only and not a conveyance per s. 77.21(1), Stats." Suggestion is made that the document should also show the grantor as the former name n/k/a new name to the new name (i.e.: grantor, Mary Smith n/k/a Mary Jones and the grantee, Mary Jones).